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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,333	07/22/2003	Paul T. Van Gompel	659-1095	6978
757	7590	04/19/2005	EXAMINER	
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			GIBSON, KESHIA L	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER
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20050412

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/624,333	VAN GOMPEL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Keshia Gibson	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 15-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/10/04, 1/21/05, + 2/4/05.</u>   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-14, drawn to a product, classified in class 604, subclass 385.01.
  - II. Claim 15-27, drawn to a process, classified in class 156, subclass 252.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product as claimed can be made by another and materially different process, such as moving a web in a longitudinal machine direction, cutting the web at two longitudinally spaced locations in a cross-machine direction to form a body panel, forming a machine-direction slit in the body panel, then attaching a crotch member to the body panel such that the crotch member extends over the previously formed slit.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Andrew Stover on 4/11/05 a provisional election was made without traverse to prosecute the invention of I, claims 1-14.

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Affirmation of this election must be made by applicant in replying to this Office action.

Claims 15-27 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Specification***

6. Claim 12 is objected to because of the following informalities: "said front and rear body panel" should read "said front and rear body panels". Appropriate correction is required.

7. Claim 14 is objected to because of the following informalities: Claim 13 states that the undergarment is to comprise "at least one fastener member connected to at least one of said front and rear body panels," while Claim 14, which depends from Claim 13, states that "said at least one fastener member comprises a pair of fastener members." "Fastener members" further comprising "fastener members" leads to an element being further defined by itself and leads to confusion as to what exactly is being claimed. Because of the language presented in Claim 14, it is unclear if the applicant intended for the "fastener member" of Claim 13 to comprise one single element (to be joined to another single element) or rather one set of fastener elements (to be joined to

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each other); and it is further unclear as to whether the applicant intended for the "fastener member" of Claim 14 to comprise two single elements (to be joined to two other single elements), a single element comprising two components (to be joined to a like element), two sets of fasteners (to be joined to each other), or some other combination not presented herein. Again, the language of Claim 14, in which an element is being further defined by itself is objected to because it causes the claim to be unclear. Appropriate correction is required.

8. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-8 and 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakahata (US 5,873,868).

In regard to Claim 1, Nakahata discloses a disposable undergarment 20/200 comprising a front body panel 46, a rear body panel 44, and a crotch member 48 (Figs 1-2; column

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3, lines 13-31). The front body panel 46 comprises a pair of opposite first laterally spaced side edges 50, a first waist edge 52, and a first crotch edge E longitudinally spaced from said first waist edge 52; the rear body panel 46 comprises a pair of opposite laterally spaced second side edges 50, a second waist edge 52, and a second crotch edge E longitudinally spaced from said second waist edge E (Fig. 2 and Fig. A below; column 3, line 13-31). The first and second crotch edges E are longitudinally spaced from each other (Fig. A). The second crotch edge E comprises at least one longitudinally extending slit 206 formed therein (see region P in Fig. B below; column 11, lines 1-29). A crotch member 48 is connected to the front and rear body panels 46, 44 and further comprises slits 206 (Fig. 2; column 11, lines 1-29). When viewing the undergarment 20 from the garment-facing surface 26, the crotch member 48 covers the slit(s) 206.

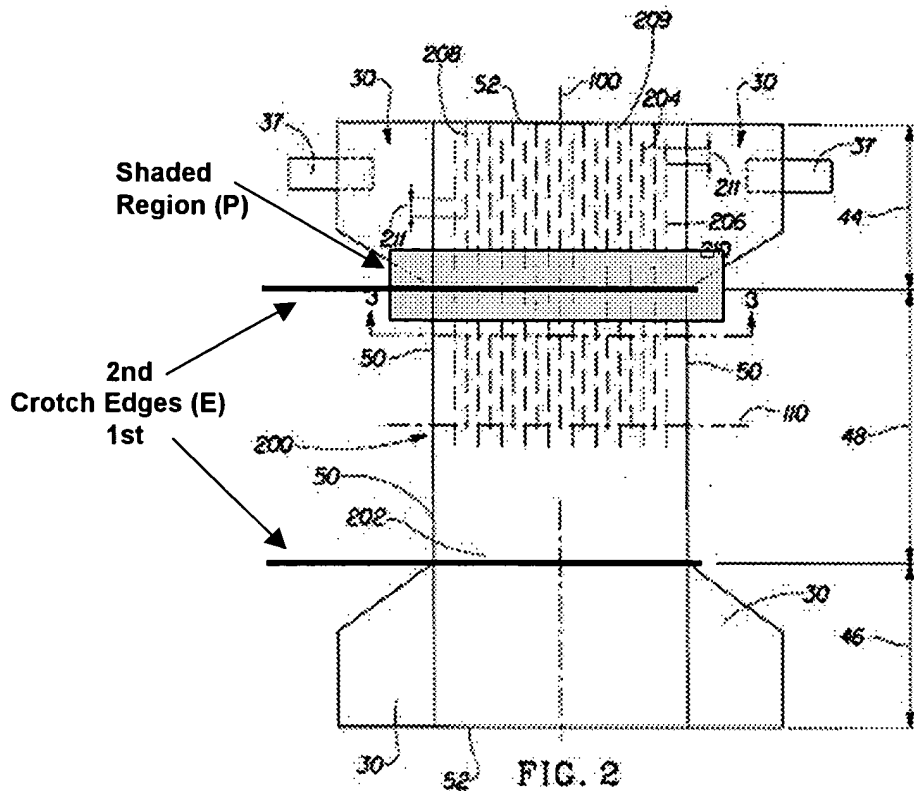


Fig. A: Examiner's mark-up of Nakahata's Fig. 2.

In regard to Claim 2, Nakahata discloses front and rear body panels 46, 44 each comprise a body side surface 24/40 and a garment side surface 26/42 (column 3, lines 13-37; column 4, lines 1-3; column 5, lines 28-31). The absorbent layer 28, body side surface 24/40, and garment side surface 26/42 are depicted as continuous sheets (Figs 1-3). Thus, the absorbent layer 28, body side surface 24/40, and garment side surface 26/42 of the crotch panel 44 are inherently connected to the absorbent layer 28, body side surface 24/40, and garment side surface 26/42 of each of the front and rear body panels 46, 44, respectively.



In regard to Claim 3, Nakahata discloses that the crotch member 48 comprises a top sheet 24, a back sheet 26, and a retention portion 28 disposed between the top sheet 24 and the back sheet 26. At least one of the top sheet 24 and the back sheet 26 comprises an elastic material 32, 63, 65 (Fig. 1; column 3, lines 13-31; column 9, lines 33-36).

In regard to Claim 4, Nakahata discloses that the slits 206 may comprise an overall pattern that extends over the entire surface of the top sheet 24 (column 12, lines 57-59). Thus, the first and second crotch edges E would comprise a first and second longitudinally extending slit 206 formed therein respectively; and the crotch member 48 would cover the first and second slits 206.

In regard to Claim 5, Nakahata discloses that the crotch member 48 comprises opposite sides 50. These opposite sides 50 further comprise elastic gasketing cuffs 63 (formed from elastic strands 65) (column 9, lines 33-36). These elastics 65 are implicitly intended to create tension within the panels for better fit around the wearer's leg; as a result, these elastics create gathers or folds within the panels 44, 46, 48 along either side of the elastics 65. The elastics 65 extend longitudinally through all three panels 44, 46, 48. Because the crotch member 48 comprises multiple slits along a majority of its transverse length (Figs. 2-3) and the elastics 65 are attached at the opposite sides 50 of the panels 44, 46, 48, some of the slits 206 existing in the crotch panel 48 lie between the elastics 65 attached at the opposite sides 50 of the crotch member 48. As a result, some of the slits 206 lie between the folds created along the length of the elastics 65. Thus, the crotch member 48 is disclosed as having at least one fold formed along each

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of its opposite sides 50, the at least one fold are connected to the front and rear body panels 46, 44 on opposite sides 50 of said slit 206.

In regard to Claim 6, Nakahata discloses that the rear body panel 44 comprising slits 206, further comprises a back sheet 26 made of an elastic material (Figs. 2-3; column 4, line 33—column 4, lines 3). The rear body panel 44 is expandable between at least a first and second condition Fig. 2, Fig. 3, wherein a pair of edges defining the slit 206 are substantially abutted when the rear body panel 44, comprising an elastic material, is in the first condition Fig. 2, and wherein the pair of edges defining the slit 206 are separated when the rear body panel 44, comprising an elastic material, is in said second condition Fig. 3 (Figs. 2-3; column 11, lines 1-37).

In regard to Claims 7-8, as discussed earlier, the absorbent layer 28, body side surface 24/40, and garment side surface 26/42 are depicted as continuous sheets (Figs 1-3). Thus, the crotch member 48 is inherently attached to the front and rear panels 46, 44 of each respective layer 28, 24/40, 26/42 of the undergarment 1, whether the body panel is in a first Fig. 2 or second Fig. 3 condition.

In regard to Claim 13, the Examiner has interpreted “at least one fastener member” to be analogous to “one fastening system.” Nakahata discloses that the undergarment 20 comprises a fastening system 36 (Fig. 1; column 8, lines 21-52).

In regard to Claim 14, the Examiner has interpreted “at least one fastener member comprises a pair of fastener members” to be analogous to “at least one fastening system comprises a pair of fastener members.” Nakahata discloses that the fastening system 36 comprises a pair of fastener members 37 (Figs. 1-3; column 8, lines 21-52).

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1-3, 5-8 and 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Nakahata.

In regard to Claim 1, Nakahata et al. disclose a disposable undergarment 20 comprising a front body panel 45, a rear body panel 43, and a crotch member 47. The front body panel 45 comprises a pair of opposite first laterally spaced side edges 50, a first waist edge 52 and a first crotch edge (dotted line between front body panel 45 and crotch panel 47 in Fig. 2) longitudinally spaced from said first waist edge 52 (Figs. 1-2). The rear body panel 43 comprises a pair of opposite laterally spaced second side edges 50, a second waist edge 52 and a second crotch edge (dotted line between rear body panel 43 and crotch panel 47 in Fig. 2) longitudinally spaced from said second waist edge 52 (Figs. 1-2). The first and second crotch edges are longitudinally spaced from each other (Fig. 2). The second crotch edge comprises at least one longitudinally extending slit 206 formed therein (Figs. 4-6; Fig. B below). The crotch member 47 connected to the front and rear body panels 45, 43 and covers at least one of the slits 206 (Figs. 1-2, Fig. B

In regard to Claim 3, Nakahata et al. disclose that the crotch member 47 comprises a top sheet 24, a back sheet 21 and a retention portion 28 disposed between said top

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sheet 24 and said back sheet 21 (page 4, lines 31-35). The both the top sheet 24 and the back sheet 21 may comprise an elastic material (page 12, lines 12-29; page 6, lines 30-31).

In regard to Claim 5, Nakahata et al. discloses that the crotch member 47 comprises opposite sides 50. These opposite sides 50 further comprise elastic gasketing cuffs 63 (Fig. 1; page 15, line 29—page 16, line 18). The elastics in the cuffs 63 are implicitly intended to create tension within the panels for better fit around the wearer's leg; as a result, these elastics create gathers or folds within the panels 43, 45, 47 along either side of the elastic. The elastics extend longitudinally through all three panels 43, 45, 47 (Fig. 1). Because the crotch member 48 comprises multiple slits along a majority of its transverse length (Figs. 2-3) and the elastics are attached at the opposite sides 50 of the panels 43, 45, 47, some of the slits 206 existing in the crotch panel 47 lie between the elastics attached at the opposite sides 50 of the crotch member 47. As a result, some of the slits 206 lie between the folds created along the length of the elastics. Thus, the crotch member 47 is disclosed as having at least one fold formed along each of its opposite sides 50, the at least one fold are connected to the front and rear body panels 45, 43 on opposite sides 50 of said slit 206.

In regard to Claim 6, Nakahata discloses that the rear body panel 45 comprising slits 206, further comprises a back sheet 21 made of an elastic material (Figs. 4-6 and Fig. B; page 6, lines 30-31). The rear body panel 45 is expandable between at least a first and second condition Fig. 4, Fig. 5, wherein a pair of edges defining the slit 206 are substantially abutted when the rear body panel 45, comprising an elastic material, is in

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the first condition Fig. 4, and wherein the pair of edges defining the slit 206 are separated when the rear body panel 45, comprising an elastic material, is in said second condition Fig. 5 (Figs. 4-6; page 9, line 27—page 10, line 16).

In regard to Claims 7-8, as discussed earlier, the absorbent layer 28, body side surface 24, and garment side surface 21 are depicted as continuous sheets (Figs 4-6). Thus, the crotch member 47 is inherently attached to the front and rear panels 45, 43 of each respective layer 28, 24, 26 of the undergarment 1, whether the body panel is in a first Fig. 4 or second Fig. 5 condition.

In regard to Claim 12, Nakahata et al. disclose that the absorbent layer 28 may be joined to the back sheet 21 along a longitudinally center line (page 12, line 35—page 13, line 2). Thus, the absorbent layer 28 of the crotch member 47 may be minimally attached to the front and rear body panels 45, 43 along a longitudinally extending centerline of said crotch member 47.

In regard to Claim 13, the Examiner has interpreted “at least one fastener member” to be analogous to “one fastening system.” Nakahata discloses that the undergarment 20 comprises a fastening system 36 (Figs. 1-2, 4-6; page 15, lines 5-28).

In regard to Claim 14, the Examiner has interpreted “at least one fastener member comprises a pair of fastener members” to be analogous to “at least one fastening system comprises a pair of fastener members.” Nakahata discloses that the fastening system 36 comprises a pair of fastener (securement) members (Figs. 1-2, 4-6; page 15, lines 5-28).

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakahata (US 5,873,868).

Nakahata discloses the claimed invention except for ratios relating the lengths of the front and rear body panels 46, 44 (first and second lengths) to the lengths of the slits 206 (third length). Nakahata disclose a range of lengths for the slits and also teaches that the configuration of the slits affects the overall performance (mainly the extensibility) of the diaper when placed under tension (column 11, line 1—column 12, line 29). Thus, it would have been obvious to one of ordinary skill in the art to provide the length of the slit with a length that is between about 5% and about 75%, a length that is between about 10% and about 50%, or a length that about 15% and about 30% of the length of either the front or rear panels since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

15. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakahata (WO 03/003961).

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Nakahata discloses the claimed invention except for ratios relating the lengths of the front and rear body panels 45, 43 (first and second lengths) to the lengths of the slits 206 (third length). Nakahata disclose a range of lengths for the slits and also teaches that the configuration of the slits affects the overall performance (mainly the extensibility) of the diaper when placed under tension (page 8, line 11—page 11, line 9). Thus, it would have been obvious to one of ordinary skill in the art to provide the length of the slit with a length that is between about 5% and about 75%, a length that is between about 10% and about 50%, or a length that about 15% and about 30% of the length of either the front or rear panels since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nakahata (US 2004/0147890 A1), Nakahata (6,262,331 B1), Wyant (US 5,843,065), Hoffman (US 4,935,021), Malowaniec (US 6,049,915).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-7136. The examiner can normally be reached on M-F 8:30 a.m. - 6 p.m., out of the office every other Friday.



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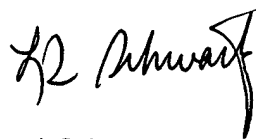
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Keshia Gibson  
Examiner, Art Unit 3761

klg 4/13/05



Larry I. Schwartz  
Supervisory Patent Examiner  
Group 3700